

LEGAL SUBJECTIVITY IN LABOUR LAW IN THE CONTEXT OF RELATION BETWEEN CIVIL CODE AND LABOUR CODE

Martin Šmíd

Abstract: *The paper deals with the actual problem of the concept of legal subjectivity in labour law in the context of relation between two main laws in this matter – Civil Code and Labour Code – which is based on the principle of subsidiarity of civil law. It analyses the problematic from a historical perspective since the distinction of labour law legal personality and capacity from classic private law legal personality and capacity in 1965 by issuing the first Labour Code (65/1965 Coll.) until the adoption of the new Civil Code in 2012 (89/2012 Coll.) through all the important historical changes (liberalization of labour market in 1990s, preparation for EU membership, adoption of New Labour Code in 2006 etc.). The conclusion is devoted to the consequences of the new Civil Code (89/2012 Coll.), which was issued in 2012 and shall be effective on 1st January 2014, for the adaptation of labour law in the area of legal subjectivity.*

Keywords: *Labour law, Civil law, Legal personality, Legal capacity, New Civil Code, Employer, Employee.*

JEL Classification: *K12, K31.*

Introduction

In this paper I will deal with the nature of the labour law capacity in relation to the general legal (hence private) personality in relation of the Labour Code (262/2006 Coll.) to the new Civil Code (89/2012 Coll.). So I will specify the legal personality (under the current legislation, eligibility for rights and obligations) and the legal capacity (according to current legislation, capacity to legal actions) in labour law after the adoption of the new Civil Code.

First part is focused on the description of the conception of legal subjectivity in labour law today and in the past, including explaining the reasons for existence for independent legal subjectivity in labour law.

Second part explains the problems which are connected with this concept, which is – from the current point of view (and from the point of view of traditional legal science) – understood as wrong and also the new legislation (New Civil Code) follows the idea of restoration of traditional terms “legal personality” and “legal capacity” [6].

Third part includes the possible and planned changes of labour law legislation after adoption of the New Civil Code which shall be effective since 1st January 2014.

Finally, the conclusion summarizes them and their effect on understanding of legal personality and capacity of employees and employers in labour law, respectively confronts it with the more conform understanding of them as contract parties (contractors) instead as subject of labour law as completely independent branch of law which concept was prevalent during the times of the socialism and was still present in the old Labour Code till 2006 (and in some extent in the New Labour Code 262/2006 Coll.).

1 Roots of today's conception of legal subjectivity in labour law

1.1 General description of today's conception of legal personality and capacity

The current concept of labour law subjectivity is still based largely on the socialistic concept that rejected dualism of private and public law and was based on the idea of separate legal branches (with a completely independent legislation).

This has had an effect on the labour law, which "emancipation" in this direction was completed by the adoption of the Labour Code (65/1965 Coll.) in the mid-sixties. [9] [10]

Therefore we can today still speak about the idea of labour law relations which are relatively independent on civil law relations regulated by Civil Code. Labour law relations are social relations incipient in the connection to the process of employment which are regulated by law. Following this we speak about subjects of legal relations who are the holders of rights and duties in these relations [7].

The understanding of independent labour law relations independent on civil law relations was even more visible in older literature – mainly before adoption of the New Labour Code (262/2006 Coll.) in 2004 [8] – but even after that in 2007 [5].

Anyway, this conception in literature was based on the terminology in Labour Code which used the term “Participants of labour relations” till 31st December 2011 and was replaced by term “Contract parties of basic labour relations” since 1st January 2012 which is also more logically consistent with the current civil law conception [4] and traditional legal theory.

1.2 Historical origin of the conception and its consequences

The development of the labour law branch follows the general legislative development. Originally, the labour law had been seen as part of the civil law (labour contract) and public law (social security legislation). By codification of labour law in 1965 by issuing of the 1965 Labour Code, labour law became independent pedagogic and scientific branch of law. [9]

This independence resulted primarily in duplication of some legislation affairs for individual private law branches separately. Respectively, it can be said that the principle of strictly separate legal branches was typical for the legislative work throughout the whole Czechoslovak legal system and lead to existence of relatively independent branches of law in whole system (including untraditional ones like economic law) and the dualism of public and private law was abandoned. Anyway this development was not automatic in all countries of the socialist block in Eastern Europe. Many of these countries never adopted such conception [10] which can be understood as “extremely socialistic”. Generally, we can say that Czechoslovak and East-German law were the most progressive in socialization of law (even in wider extent than law in USSR). [9]

For the labour law it was not possible to use subsidiary the Civil Code for a number of general institutes (e.g. counting of time, legal subjectivity, etc.) because of this separation of legal branches.

Labour Code No. 65/1965 Coll., was seen as a legal regulation of a complex nature, and regulated all general legal institutes independently; therefore unnecessarily duplication of regulation occurred. Before that - till 1965, the use of Civil Code (per analogiam) was necessary due to the lack of specific labour law regulation and was commonly accepted by judiciary praxis. In process law the influence of civil law was (till 1965) even stronger. [10]

Generally, the independency of labour law evolved continuously after 1948 because labour was no longer understood as goods (commodity) like in the capitalist economy.

Therefore, civil law – which is by nature property law – shouldn't regulate the dependent work for ideology reasons. Important consequence of this excluding of labour relations from civil law was abolition of contractual freedom from labour law and its strict regulation with only cogent norms. [10] The persons' autonomy was limited in the whole legal system but in labour law it was on much more strict level than in the civil law which kept the contractual freedom in relations between individuals in some extent.

1.3 Independent legal subjectivity in labour law

In the a separate labour law occurred also the independence of labour subjectivity which was newly more or less separated from the eligibility for rights and obligations (hence the capacity to legal actions) given by Civil Code. That was associated with the independence of labour relations on civil relations at all and the fact that the contemporary law did not allow an umbrella term of private (civil) legal relationships, which conception was based on the above-mentioned fact of separation of legal branches.

The Labour Code 65/1965 Coll. (the old Labour Code) provided in its original version of § 1: *During the participation of citizens in social work labour relations arise between citizens and socialist organizations. These relations are governed by the Labour Code.* [2]

Some linkage to the Civil Code 40/1964 Coll. (the old Civil Code) there may appear to be in the use of concept of citizen and socialist organizations. These persons are defined as participants in civil relations in the old the Civil Code, Part One, Chapter Two.

However, you can legitimately say that labour and civil law are again independent and Labour Code could manage without civil legislation bypassed (and vice versa).

The old Civil Code stated about the legal subjectivity that the eligibility of an individual to have rights and obligations occurs at birth and the capacity to legal actions is acquired by full majority. The socialist organizations were, according to Civil Code, public, cooperative and social organizations and other organizations whose activities contribute to the development of socialist relations. [1]

The legal definition in old Labour Code was very close. The definition of socialistic organization was exactly the same (remarkable fact is, that in civil relations individuals were filed first and organizations second and in labour law the order was opposite).

On the other hand, the subjectivity of an individual worker was regulated differently. It began in the calendar reaching the age of 15 (and accomplishment of obligatory school attendance) for both legal personality and legal capacity. [2] We can say and it was interpreted that way in the labour law literature that in labour law the legal personality and legal capacity merges in the one concept of labour law personality. [8]

Therefore, both regulations – the regulation in Labour Code and the regulation in Civil Code – could be applied independently. This principle was indeed one of the leading ideas of the old Labour Code. It was a separation of labour law from other legal sector, particularly from civil law, therefore it was necessary that the Labour Code set quite general issues, such as legal personality, the adjustment of the legal acts and their invalidity, etc. [10]

2 Problems connected with the concept of legal subjectivity

2.1 Defects of the definition of legal subjectivity in the old Labour Code

An important moment of this independence, which was mentioned only briefly in the previous text and it should be emphasized: the Labour Code speaks there about workers and socialist organizations in terms of participants in of labour relations in general, even though they are in fact primarily a contract partners of the employment relationship (employment); particularly the use of the term (socialist) organizations in this regard is inappropriate - obviously from today, not from the former view.

This change was necessary due to the complete separation of labour and civil law, and this issue will be concretized in following text.

Starting from the current understanding (especially with regard to the adoption of the New Civil Code which includes the labour relations systematically in the frame of other obligations [4] [6]) the definition of employee and employer should be approaching the definition of contractors (contract parties) rather than subjects of law [12] and should be understood that way in legal praxis and literature.

The employee and employer (as pair-terms) are logical equivalent of other conceptual pairs as of as pairs like the seller - the buyer or the lender - the borrower: the relations arising from obligations. Compared to that, old Labour Code (the original version) equated its formulation as well as the used terminology (worker - socialist organization) rather with concepts of natural person or corporation (individual - socialist organization) used by the old Civil Code as a base for all civil relationships possible. In similar way, the definition of worker and socialist organization in Labour Code was base for labour relations (and not only a definition of contract parties in contract about dependent work).

This concept was unsustainable even that time, for example by counting only more or less with labour relations concluded between the citizen (individual) and socialist organization (§ 27 section 2).

Labour relations between citizens or employment relationship with a "non-socialist organization" are mentioned only marginally (§ 268-270). Among the citizens, employment could be arranged only to provide services for personal use; employment of other persons for the purpose of business was excluded, which implied also from the opening articles of the old Labour Code [2] – prohibition of exploitation of man by man – and from the comprehension of labour in socialistic theory in general (as mentioned before, labour was not understood as commodity which could be sold or bought like goods).

2.2 Legal subjectivity problem in the light of recent legal changes

The social changes after 1989 proved to be necessary to carry out also the reform of labour law. They occurred thus through the adoption of the Employment Act (1/1991 Coll.), The Collective Bargaining Act (2/1991 Coll.), Laws on wages and salaries (1/1992 Coll. and 143/1992 Coll.). An important amendment to the Labour Code was the Act 74/1994 Coll., which also replaced the terms worker - organization by terms employee - employer. Since the end of the 1990s the Czech labour law gradually adapts to EC Law (in particular, by the amendment 155/2000 Coll.) including regulation against discrimination. [9]

In this connection, things that failed to be changed during the transformation can be also mentioned: especially high level of cogency of the Labour Code. This law was still built

on the principle of "what is not allowed is forbidden" which was typical for the socialistic law and couldn't be accepted in modern democratic society. Second thing that stood "frozen" regardless social, economic and legal changes (in other branches) was pending, because de jure non-existent, relationship to the Civil Code.

For this reason, in legislation and consequently in the literature [8] a separate concept of labour law subjectivity lasted even after the introduction (return) of terms employee - employer.

The policy change should occur by the adoption of the new Labour Code, which was enacted in 2006 (262/2006 Coll.) with effect since 1st January 2007. It finally returned to the general principle of "what is not allowed is forbidden", hence the relationship to the Civil Code was not very satisfactorily resolved.

The new Labour Code in its original version was built on the principle of delegation, mentioned in § 4 [3]. Application of the Civil Code remained limited to situations in which it was referred directly by the Labour Code, and was so very unclear. It was also one of the reasons why the Constitutional Court cancelled part of Labour Code provisions by its Decision 116/2008 Coll.

The Constitutional Court summarized that civil law is a general private law subsidiary applicable to all private sector (including labour law); regulations governing this branch have always priority over the general regulation, but in case they do not provide a specific question, the civil law should be used. Method of delegation listed in § 4 of the Labour Code torn apart functional links to general private law and brought considerable uncertainty into labour relations. Therefore it shall be abandoned and the Constitutional Court abolished the § 4 of the Labour Code. [11]

Only by effect this judgment thus the traditional relationship of subsidiarity between civil law (as a general private law) and the labour law (as special private law) begins to apply.

However, the definition of contractors in employment relationships, especially the employee remained to some extent tributary to the original regulation of labour law and defined the subjectivity independently.

Some change was brought up by amendment since 1st January 2012. Although the actual content of that legal provisions has not changed significantly, the relevant part of the Labour Code is renamed "Contract parties of basic labour relations" rather than as "Participants of labour relations." The legislative shift to an understanding of employee and employer purely as contracting parties is evident here regardless the previously mentioned fact that the definitions didn't change.

Only change was the omission of direct links to the Civil Code (§ 6 section 2, § 8), representation and responsibility of employers in labour law relations (§ 7 section 2), redefinition of position of the state in labour relations (§ 9), omission of other thing which can be solved only by the Civil Code, including legal acting (§ 10 section 2, § 11 section 1, 2 and 3 and § 12).

3 Future legislative and conceptual changes in labour law based on the adoption of New Civil Code

3.1 General view on future changes

Other changes should occur in connection with the adoption of the new Civil Code, which should be effective since 1st January 2014.

A major change will be particularly terminology. Following the abandonment of "eligibility for rights and obligations" and "capacity to legal actions" by the Civil Code they will be replaced by traditional terms "legal personality" and "legal capacity" [4]. This is connected with the abandoning of the concept of "legal act" or "legal transaction" as a single part of legal acting. With the New Civil Code we will have only the legal acting. [6]

The new Civil Code takes the basic status matters (legal subjectivity, divided to legal personality and legal capacity) into its content. Therefore, the existence of a special "capacity to labour transaction" or "labour majority" as it is de facto (under another name) in relation of the current Labour Code and the old Civil Code, is no longer sustainable.

3.2 Concrete legal changes of labour law legislation included in the New Civil Code

The concrete changes of labour law matter included in the New Civil Code are regulating the legal acting of minors. The capacity of minors to enter into labour relations is expressed in the New Civil Code in three provisions.

Firstly, § 34 says that dependent work of minors under the age of fifteen years or minors who have not completed compulsory schooling, is prohibited (these minors may perform only artistic, cultural, sporting or advertising activities).

Secondly, (§ 35 section 1) provides: A minor who is at least fifteen years of age and completed compulsory schooling, may commit for performance of dependent work pursuant to other legislation.

Interesting change (and increase of the role of the parent as a guardian of the minor) is included in § 35 section 2. It gives to the guardian of the minor (under age 16) the right to terminate the employment of the minor in case it is in concern of education, development or health of the minor. [4] [6] Anyway the way of doing so need to be concretized by "other regulation", so it should be transformed in Labour Code (before New Civil Code come to effect).

For adult employees their legal capacity (including labour) is self-evident and does not need special regulation.

Conclusion

I think that by having such legislation in the new Civil Code, it is not necessary to define the labour subjectivity in the Labour Code in a special way. Should Labour Code to define the employee, then already purely as a party to the basic labour relationship/contract (i.e. in the sense that an employee is the one who commits to undertake dependent work); legal personality of its employee and his legal capacity is fully resulting from the Civil Code as a general law.

The only moment that will have to be in the Labour Code separately emphasized, is that only a natural person may enter into an employment relationship as an employee (naturally, legal person cannot exercise dependent labour).

About the employer applies more or less the same, although in this case the current definition in § 7 can be acceptable in the changed new concept: The employer (for the purposes of the Labour Code) means any legal or natural person who employs an individual in an employment relationship [3].

Although it would be sufficient to say it by even simpler definition: The employer is one who employs an individual in an employment relationship. Indicating that an employer may be a legal or natural person is redundant here; the capacity of both legal and natural persons to employ an employee is self-evident.

Finally, we can add that the actual content of employment is not solved in the New Civil Code. Even though it contents Part Four, Chapter II, Title called "Employment", leaves it entirely to Labour Code, respectively generally to other laws (§ 2401).

But even the inclusion between contract types indicates closer links of Labour Code to the New Civil Code, than it is today, and final elimination of duplicated regulation from the Labour Code, which will also affect the legal personality and the legal capacity mentioned in this article.

References

- [1] Act No. 40/1964 Coll., Civil Code
- [2] Act No. 65/1965 Coll., Labour Code
- [3] Act No. 262/2006 Coll., Labour Code
- [4] Act No. 89/2012 Coll., Civil Code
- [5] BĚLINA, M. *Pracovní právo*. 3. doplněné a přepracované vydání. Praha: C. H. Beck, 2007. 572 pp. ISBN 978-80-7179-672-5.
- [6] ELIÁŠ, K., HAVEL, B. et. al. *Osnova občanského zákoníku. Osnova zákoníku o obchodních korporacích*. 1. vydání. Plzeň: Aleš Čeněk, 2009. 574 s. ISBN 978-80-7380-205-9.
- [7] GALVAS, M. et. al. *Pracovní právo*. 1. vydání. Brno: Masarykova univerzita, 2012. 752 pp. ISBN 978-80-210-5852-1.
- [8] GALVAS, M. et. al. *Pracovní právo*. 2. vydání. Brno: Doplněk, 2004. 672 pp. ISBN 80-7239-173-9.
- [9] *Komunistické právo v Československu: Kapitoly z dějin bezpráví*. 1. vydání. Bobek, M., Molek, P., Šimíček, V. (eds.). Brno: Masarykova univerzita, 2009. 1005 pp. ISBN 978-80-210-4844-7.
- [10] KUKLÍK, J. et. al. *Vývoj československého práva 1945-1989*. 1. vydání. Praha: Linde, 2008. 727 pp. ISBN 978-80-7201-741-6.
- [11] PICKOVÁ, Z. *Zákoník práce po nálezů Ústavního soudu*. EPRAVO.CZ – Sbírka zákonů, judikatura, právo [online]. 2008 [cit. 2012-12-20]. Available from WWW: <<http://www.epravo.cz/top/clanky/zakonik-prace-po-nalezu-ustavniho-soudu-54488.html>>
- [12] *Soukromé právo v pohybu*. 1. vydání. Eliáš, K. (ed.). Plzeň: Aleš Čeněk, 2005. 181 pp. ISBN 80-86898-31-8.

Contact Address**JUDr. Martin Šmíd**

University of Pardubice, Faculty of Economics and Administration, Institute
of Administrative and Social Sciences

Studentská, No. 95, 532 10, Pardubice, Czech Republic

E-mail: martin.smid@upce.cz

Phone number: +420 466 036 571

Received: 29. 04. 2013

Reviewed: 10. 06. 2013

Approved for publication: 13. 08. 2013